

LFC Requester:	Marty Daly
----------------	------------

AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

and

[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:

Original ☒ Amendment ☐

Correction ☐ Substitute ☐

Date January 23, 2016

Bill No: SB 155

Sponsor: Sen. Peter Wirth

Agency Code: 305

Short Uniform Powers of

Person Writing David Murphy

Title: Appointment Act

Phone: 222-9087

Email dmurphy@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

The Uniform Powers of Appointment Act was drafted by the Uniform Law Commission with the intent to codify existing case law regarding estate planning. Powers of appointment are commonly used by estate planners to give a third party the authority to direct the disposition of a donor's property to specified eligible recipients. The purpose of the Act is to provide statutory authority for the creation, revocation, and use of powers of appointment.

Article 1 (Sections 101 – 104): Contains the short title (§101), definitions (§102) and scope (§§ 103 & 104) of the Act. Some of the critical definitions to understanding the Act are: “donor” means a person that creates a power of appointment); “power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. “Power of appointment” does not include a power of attorney; and “powerholder” means a person in which a donor creates a power of appointment.

Article 2 (Sections 201 – 206): This sections details the creation, revocation and amendment of a power of appointment. §201 explains how a donor creates the power of appointment, and the donor may revoke or amend that power under § 206. §202 dictates that the power is not transferable to another person. §§203 – 205 explain the scope of the powerholder's authority.

Article 3 (Sections 301 – 314): This section is concerned with how the powerholder exercises the power of appointment. Under §301, the power of appointment is only valid if the instrument exercising the power is legally valid, is consistent with the powerholder's intent, and satisfies the donor's requirements (all of which are describe in more detail in §§302-304). Section 305 details what appointments are permissible, and §307 details what appointments are impermissible. Sections 309 through §311 explain the disposition of “unappointed” or “ineffectively appointed” property. Section 14 allows the powerholder to revoke or amend the exercise under specific circumstances.

Article 4 (Sections 401 – 407): This section of the Act allows the powerholder to disclaim the power of attorney (§401), to release a power of appointment (§§402-404), or to contract to either exercise or not exercise a power of appointment (§§405-406). Section 407 is the remedy for a breach of that contract.

Article 5 (Sections 501 – 504): Under the Act, the powerholder’s creditors have rights in the appointive property. A creditor of the powerholder can reach the appointive property of a general power of appointment, in some circumstances, whether or not the general power of appointment was created by the powerholder. However, if the appointive property was of a “nongeneral” power of appointment, it is exempt from a creditor’s claim (the exception to that being if the property was transferred in violation of the Uniform Voidable Transactions Act §56-10-14).

Article 6 (Sections 601-603): The miscellaneous provisions section of the Act. §601 says that consideration shall be given to the need to promote uniformity of the act. Section 603 indicates when the Act would apply to all powers of appointment created before, on or after January 1, 2017. The Act would only be applicable to judicial proceedings filed after January 1, 2017. The Act may be applicable to prior filed cases only if it does not interfere with the proceeding or prejudice the rights of a party.

Article 7 (Sections 701 – 727): This section makes technical and conforming changes to the Uniform Probate Code and the Uniform Trust Code, and makes amendments to the Uniform Probate Code pertaining to notice, time for presentation of claims, penalty clauses and closing an estate. Many of the changes proposed are designed to reflect the provisions of the Uniform Power of Appointment Act. Section 702 makes minor changes to hearing notice requirements and adopts gender neutrality in its language. Section 703 strikes the bulk of statute NMSA 1978, Section 45-1-403, and Sections 704-709 are new statutes designed to replace NMSA 1978, Section 45-1-103. Section 710 amends statute NMSA 1978, Section 45-2-517, and §711 amends statute NMSA 1978, Section 45-2-608. Section 712 amends NMSA 1978, Section 45-2-704 to be consistent with the Act. Section 715 proposes to repeal existing statute NMSA 1978, Section 45-3-801 and replace it with a new statute about notice to creditors. Section 716 makes minor amendments to NMSA 1978, Section 45-3-803 and §717 makes a minor amendment to correct a statute number reference. Section 718 repeals statute NMSA 1978, Section 45-3-905 (which was already reserved), and proposes to make unenforceable any provision in a will that purports to penalize any interested party who contests the will. Section 719 makes minor amendments to NMSA 1978, Section 45-3-912. Section 720 amends Section 45-3-1003 to lengthen the amount of time a personal representative for an estate to close an estate from three to six months. Section 721 amends Section 45-3-1101, which describes the effect of approval of agreements. The amendments propose to expand the scope of what constitutes a compromise. Section 722 makes minor changes to statute Section 45-3-1102. Section 723 makes amendments to Section 46A-1-113 to further define a “settlor.” Sections 724 & §725 repeal statutes Sections 45-2-608, 45-2-704 and 45-2-907. Section 727 makes the effective date of the proposed changes to existing law July 1, 2016.

## **FISCAL IMPLICATIONS**

## **SIGNIFICANT ISSUES**

The purpose of any proposed uniform law is to create similar and consistent enforcement of laws across the country, and the Uniform Powers of Appointment Act was drafted by the Uniform Law Commission in that spirit. At this point, however, only three other states (Montana, Colorado and North Carolina) have codified the Act. This year, in addition to New Mexico, the Act has been proposed to state legislatures in Missouri and Virginia.

The idea behind the Act is to create consistent statutory law for estate planners. The Act does not propose any law that is inconsistent or new; rather it codifies existing case law. The Uniform

Law Commission reports that the Act is based on the Restatement (Third) of Property: Wills and Other Donative Transfers, and was created with input from the American Bar Association Section on Real Property, Trust and Estate Law and the American College of Trust and Estate Counsel.

Most of the amendments proposed in Article 7 are consistent with the Act. However, others (§§ 718, 720, 721 and 723) are amendments to probate law that do not appear to be related to the Act, and may be considered separately.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This Bill makes the same proposals as Senate Bill 91. However, SB 91 includes the following additions: enacting the Uniform Trust Decanting Act; Revising the Statutory Rule Against Perpetuities as it Affects Property Interests, Including Real Property Interests, Held in Trust.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

## **AMENDMENTS**